IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 512 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREMSINGH DURGADAS RAJPUT

Versus

RAMANLAL MAGNALAL BORISA

Appearance:

MR NS SHETH for Petitioner

MR MANKAD, ADDL. PUBLIC PROSECUTOR for State.

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/06/2001

ORAL JUDGEMENT

Ramanlal Maganlal Borisa - respondent No.1 filed a direct complaint being Criminal Case No. 7 of 1996 on 18.3.1996 before the Court of learned Judcial Magistrate First Class, Kheda against the present applicant accused

who is a public servant serving as Station Engineer of All India Radio at Baroda, for the offences punishable under Sections 504, 506(2) of the Indian Penal Code, read with Section 3(1) of the Atrocities Act, regarding incident which alleged to have taken place on 17.3.1996 at Kheda.

2. It appears from the complaint which is annexed at Annexure "I" that the respondent No.1 complainant is a retired teacher belonging to Scheduled Caste of "Chamar". One Ramsinh, son of deceased Pratapsinh, who was the close friend of the complainant was staying with him and looking after him. It is further alleged in the complaint that the petitioner accused demanded Rs. 50,000 from him for giving employment to Ramsinh, which was paid by him. But, according to the complainant the accused failed to provide job to Ramsinh and therefore, he (accused) called them at Kheda for paying the said amount of Rs. 50,000 after borrowing the same from his relative staying at Kheda. Accordingly, they reached Mulki Bhuvan in Kheda on 17.3.1996 and waited for the accused till 7 P.M. At that time, all of a sudden the accused met him on platform No.3 of Kheda Bus Stand. When the money was asked for, accused got annoyed and started giving filthy abuses by using language relating to the caste like "Dheda" "Chamadia" and "Khalpa" and threatened to kill them. Without reacting to the same the complainant asked the accused as to why he is using such words. Thereupon accused got excited more and once again used the same words. Thus, therefore, the accused committed offence under Sections 504, 506(2) of the IPC r/w Sec. 3(1) of the Atrocities Act.

3. The learned Magistrate sent the matter for investigation under Section 156(3) of the Criminal Procedure Code.

4. The applicant accused has therefore, filed this application under Section 482 of the Cr.P.C to quash criminal proceedings of M Case No. 6 of 1996 arising out of Criminal Case No. 7 of 1996 pending before the Court of learned JMFC, Kheda, which was later on committed to the Court of learned Sessions Judge, Kheda at Nadiad and numbered as Special Case No.90 of 1996 before the Designated Court.

5. Learned Counsel Shri Sheth for the petitioner accused raised a neat question of law, namely that whenever the complaint is filed against the accused under Atrocities Act, under the Rules the investigation is required to be carried out by DSP, but in this case the

investigation is carried out by an officer below the rank of DSP and therefore the case against the applicant accused transferred to the Designated Court itself is illegal. He further submitted that a bare look at the complaint shows that false and frivolous complaint is filed only because the applicant accused terminated the service of one Diptiben. It is true that the complainant is from Ahmedabad and the accused is a resident from Baroda serving at Baroda and therefore, it would be difficult to believe that the accused would call the complainant at Kheda for paying the money, which is alleged to have been received by him from the complainant. In addition to that there is a letter dated 17.4.1996 addressed by the complainant to the District Backward Class Welfare Office, Nadiad to take action against DSP Shri Keshavkumar and PSI Chauhan for helping the accused in this case. A copy of the same was sent to Shri P.D. Waghela, IAS and Shri Fakirbhai Waghela, Hon'ble Minister for Social Welfare, Sachivalaya, Gandhinagar, who are belonging to the Scheduled Caste. The tone of language of the application dated 17.4.1996 shows that the complainant can go to any extent and file complaint against anyone. The applicant accused has produced on record the order passed by the CAT in application filed by Kum. Diptiben, challenging her termination order passed by the petitioner accused on the basis of production of false caste certificate alleged to have been issued by the complainant himself.

6. The averments made on oath in this application alongwith the authenticated documents produced on record are not at all controverted by the respondent No.1 - complainant though he is duly served.

7. Ordinarily, this Court would not interfere with the FIR or the investigation filed in a complaint before the court which is already transferred to the Designated Judge of Sessions Court, Kheda, but as an exceptional case the impugned M.Case No. 6/96 arising out of Criminal Case No. 7/96 filed by the respondent No.1 complainant before the Court of learned JMFC, Kheda,, which was transferred to the Designated Judge of Sessions Court, Kheda and which is registered as Special Case No. 90/96 is hereby quashed and set aside. The application is allowed accordingly. Rule is made absolute.

(B.J. Shethna, J.)

*/Mohandas